

## REMARKS/ARGUMENTS

### Status of the Claims

Claims 78-137 were previously pending. Original claims 1-76 were canceled without prejudice in the Preliminary Amendment. Claims 78-97, 105-108, 112-113, 125-128, and 132-133 are canceled herein without prejudice. The remainder of the previously pending claims were amended. Claims 138-144 are newly presented. Upon entry of these amendments, claims 98-104, 109-111, 114-124, 129-131, and 134-144 will be pending.

Applicants make the required response to the Restriction Requirement below.

### Support for the Amendments to the Claims

All the previously pending and maintained dependent claims were amended for grammatical reasons to lead with "The" in place of "A."

Claim 98 was amended to set forth that the second peptidyl fragment comprised a human insulin precursor. Support for this subject matter is found *inter alia* in the specification at p.24, second full paragraph and previous claims 78, 87 and 88. Claim 98 was further amended to recite an "nucleic acid" rather than "nucleic acid sequence." Support for this subject matter is found in the specification *inter alia* at p. 10 under the heading of Section 4.1.

Claims 101-103, 109-110, 116, 117, 121-123, 129, 130, 136 and 137 were amended to recite "the amino acid sequence of" before the respective SEQ ID No. Support for such is found *inter alia* in the previous version of the claims.

Claim 118 was amended to set forth the subject matter of amended claim 98: "A cell comprising the nucleic acid of claim 98...". Support is found *inter alia* in the previous version of this claim and as set forth above for claim 98.

New claim 138 depends from claim 98 and sets forth the length of the first peptidyl fragment as being from 20 to 92 amino acids in length. Support for this subject matter is found *inter alia* in the base claim and in the specification in SEQ ID NO:2 which is 92 amino acids long.

New claims 139 and 143 depend from claims 98 and 118 respectively and set forth that the length of the first peptidyl fragment is between 20 and 49 amino acids in length. Support for this subject matter is found *inter alia* in the base claim and in the specification in SEQ ID NO:3 which is 49 amino acids long.

New claims 140 and 144 depend from claims 98 and 118 respectively and set forth that the first peptidyl sequence comprises a sequence identical to an N-terminal amino acid sequence of SEQ ID NO: 2 of the same length as the first peptidyl fragment or having an amino acid sequence which differs by one or two residues from the N-terminal sequence of SEQ ID NO:2 of the same length. Support for such subject matter is found *inter alia* in the specification at p. 22, and particularly, the third paragraph.

New claim 141 depends from claim 118 and sets forth that the cell is a bacterial cell. Support for this subject matter is found *inter alia* in the specification at p. 14, third full paragraph.

New claim 142 depends from claim 118 and sets forth that the cell is a mammalian cell. Support for this subject matter is found *inter alia* in the specification at p. 14, third full paragraph.

In view of the above, the Applicants submit that the amendments add no new subject matter and respectfully request their entry.

#### **Response to the Restriction Requirement**

The Restriction Requirement proposed to divide the inventive subject matter into three categories:

- I. Chimeric proteins (claims 78-97).
- II. Nucleic acids (claims 98-117).
- III. Cells (claims 118-137).

Applicants were further required to elect one of the categories for examination.

In response, Applicants elect category III with traverse. Applicants have canceled the claims in Category I and request rejoinder of Categories II and III in view of the amendments to the claims.

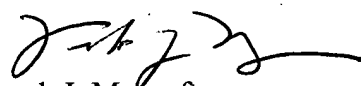
As amended, the Category III claims recite a nucleic acid of the nucleic acid base claim (claim 98). Thus, the Category III and Category II claims are of the form AB<sub>sp</sub>/B<sub>sp</sub>. Pursuant to MPEP §806.5(c)II (see p. 800-43, bottom left column, of the MPEP, Eighth Edition, May 2004 Revision), restriction should not be required where there is no evidence that the claimed cell subject matter would be patentable without the recital of "comprising the nucleic acid of claim 98 ..." In view thereof, Applicants respectfully request reconsideration of the instant restriction requirement.

### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,

  
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